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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 FREDERICK WILLIAM EVERTS,) No. C 09-4857 JSW (PR)
10 Petitioner,)
11 vs.) **ORDER TO SHOW CAUSE**
12 JAMES YATES, Warden,)
13 Respondent.)
14 _____)

15
16 **INTRODUCTION**

17 Petitioner, a prisoner of the State of California, currently incarcerated at Pleasant
18 Valley State Prison in Coalinga, California, has filed a habeas corpus petition pursuant to
19 28 U.S.C. § 2254 challenging the constitutionality of his state conviction. Petitioner has
20 paid the filing fee. This order directs Respondent to show cause why the petition should
21 not be granted.

22 **BACKGROUND**

23 According to the petition, Petitioner was convicted of multiple sex offenses in
24 Santa Clara County Superior Court, and, in 2007, the trial court sentenced him to a term
25 of 800 years in state prison. Petitioner's appeal to the California Court of Appeal and his
26 petition for review in the California Supreme Court were denied in 2007 and 2008
27 respectively. Petitioner subsequently sought collateral relief in the state courts. Petitioner
28 filed the instant federal habeas petition in this Court on October 13, 2009.

DISCUSSION

I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” *Id.* § 2243.

II Legal Claims

Petitioner raises the following federal ground for relief in the petition: Penal Code § 25(b) violates due process by unconstitutionally shifting the burden of proof on the element of intent. Liberally construed, it does not appear from the face of the petition that Petitioner is not entitled to relief on the other claims set forth above. Accordingly, Respondent is ordered to respond to the petition as set forth below.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. The Clerk shall serve by certified mail a copy of this order and the petition, and all attachments thereto, on Respondent and Respondent's attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)** days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the issues presented by the petition. If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on


1 Respondent within **thirty (30)** days of his receipt of the answer.

2 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
3 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
4 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
5 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
6 days of receipt of the motion, and Respondent shall file with the Court and serve on
7 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

8 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
9 the Court informed of any change of address by filing a separate paper captioned "Notice
10 of Change of Address." He must comply with the Court's orders in a timely fashion.
11 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
12 to Federal Rule of Civil Procedure 41(b).

13 IT IS SO ORDERED.

14 DATED: April 27, 2010



JEFFREY S. WHITE
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

FREDERICK WILLIAM EVERTS,
Plaintiff,

Case Number: CV09-04857 JSW

CERTIFICATE OF SERVICE

v.


JANES YATES et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 27, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Frederick W. Everts
F62994
Pleasant Valley State Prison
P.O. Box 8504
Coalinga, CA 93210

Dated: April 27, 2010


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk